

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 824 of 1997

in

SPECIAL CIVIL APPLICATION No 3574 of 1985

with

CIVIL APPLICATION No 10810 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

KANKARI J PUROHIT

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 824 of 1997
MR MD RANA for Appellant No.
..... for Appellant No.
MR DAVE ASST.GOV.T.PLEADER for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 01/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

The appellant - original petitioner has challenged in this appeal the judgement and order dtd.5/5/1997 passed by the learned Single Judge of this Court (Coram ; S.K. Keshote,J.) dismissing his Special Civil Application No.3574 of 1985.

2. The appellant - original petitioner was born on 4/7/1951. On 10/7/1975 he was appointed as Work Charge Tracer but later-on i.e. on 27/10/1975, his services were terminated only on the ground that he was found to be surplus. Later-on, by order dtd.17/10/1977, he was once again appointed as Tracer. Later-on he was selected on the post of Additional Assistant Engineer and promoted as such by an order dtd.5/2/1982 (Annexure-A to the petition) and relieved from the post on 15/2/1982 for joining new assessment, but on the next day i.e. on 16/2/1982, the order of promotion to the higher post of Additional Assistant Engineer was cancelled on the ground of age bar. Since then he was working once again on the lower post of Tracer. However, for the reasons best known to him, he approached this Court by way of Special Civil Application No.3574 of 1985 only on 12/7/1985 i.e. after a period of almost three and half years of his reversion. The learned Single Judge of this Court by his judgement and order dtd.5/5/1997 dismissed the writ petition on the ground of gross delay and laches of three and half years and also on merits. The same is challenged in this appeal along with Civil Application No.10810 of 1997 for stay. It seems that no favourable order is passed in the said Civil Application so far in favour of the applicant - appellant. Be that as it may.

3. Learned counsel Shri Rana for the appellant vehemently argued that the learned Single Judge was wrong in dismissing the petition on the ground of gross delay and laches and also on merits. Mr.Rana submitted that the judgement was kept reserved by the learned Single Judge after hearing the matter. He submitted that if he was given an opportunity to explain the delay of three

and half years in filing the writ petition, then he would have certainly explained. He also submitted that once the petition was admitted, later on another learned Single Judge cannot dismiss the writ petition on the ground of delay and laches and that too when no even formal objection was raised by the other side in the matter. In support of his submissions Mr.Rana has placed reliance on the following decisions of this Court:-

[1] 1997 (1) G.L.R. 617.

(Dr.Jayantilal Mohanlal Desai Vs. State of Gujarat & Ors.

[2] 1993 (2) G.L.H. 705.

(Babubhai Ranchhodbhai Patel Vs. State of Gujarat & Ors. and

[3] 23 (2) G.L.R. 85.

(Kiritkumar D.Vyas Vs. State & Anr.)

4. We have carefully considered all the aforesaid three judgements. First two judgements are of learned Single Judge of this Court, whereas the third and last judgement is of Division Bench of this Court and in our considered opinion, none of them has any application to the facts of this case and therefore, we have refrained from dealing with the same in detail. It is true that the writ petition was admitted by another learned Single Judge though it was filed after a delay of almost three and half years of the impugned reversion order passed against the appellant - original petitioner. It is also true that no formal objection was either raised in the reply filed by the other side or even at the time of oral hearing of the petition, but in our considered opinion, it would not preclude the learned Single Judge from dismissing the petition on the ground of gross delay and laches of three years and half years. The learned Single Judge was exercising his extraordinary jurisdiction and irrespective of the fact that the petition was admitted and pending before this Court for some time and that there was no formal objection raised by the other side, it would not come in the way of the learned Single Judge in deciding the matter on the ground of delay and laches. Time and again, it is held by the Hon'ble Apex Court that only those vigilant persons may get the benefit who approach the Court well in time and not those who are not vigilant. It may be stated that if the learned Single Judge had accepted the petition, though there was gross delay of three and half years, then some one else had been pushed down or reverted to the lower post of Tracer, who was never before the court, which would have caused serious prejudice to at least one person. We are really surprised that though the appellant was over age, he was

given promotion and it seems that as soon as it had come to the notice of the authority, immediately on the next day, his promotion order was cancelled and he was reverted to the lower post of Tracer. Perhaps knowingly well that he was not eligible, he continued to work on the post of Tracer, but for the reasons best known to him, after a period of almost three and half years of the passing of the reversion order, he filed writ petition and took a chance before this Court, which in our considered opinion, the learned Single Judge has rightly dismissed the said petition on the ground of gross delay and laches of almost three and half years.

5. We are really surprised with the submissions made by Mr.Rana, learned counsel for the appellant that he was not given opportunity by the learned Single Judge before dismissing the petition on the ground of gross delay and laches. According to him, the petitioner - appellant should have been given notice and if such notice was given by the learned Single Judge then he would have offered reasonable explanation. We are really surprised with the submissions. Whenever a person approaches the Court, it is his/her duty to first explain the delay, if any. The Court had not to issue notice to the petitioner - appellant. It is always easy to offer any type of excuse / explanation after years to gather that why he had approached the Court late. It may also be stated that even in this appeal, the appellant - original petitioner was unable to offer any explanation whatsoever that why he approached this Court after a period of almost three and half years of the reversion order passed against him.

6. In view of the above discussion, we do not see any reason to interfere with the judgement and order passed by the learned Single Judge dismissing the writ petition on the ground of gross delay and laches as well as on merits.

7. Before parting, it may be stated that Mr.Rana had also submitted on the ground of merits. According to him, when about 11 persons were extended the benefits though they were over age, then the Government ought to have extended the benefits to the appellant - petitioner as well. Merely because some wrong favour was shown by the State Government to some persons it, would not mean that the Government should continue to extend such wrong benefit. If the person is over age and is not entitled then it is always wrong to extend the benefits to those persons who are not eligible under the rules.

8. In view of the above, this appeal fails and hereby dismissed.

9. In view of the above order, Civil Application No.10810 of 1997 is dismissed. No costs.

(B.J. SHETHNA, J.)

(SHARAD D.DAVE, J.)

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